Not For Legal Use

Not For Legal Use

Not For Legal Use

SUFFOLK COUNTY CLERK
RECORDS OFFICE
RECORDING PAGE

Not For Legal Use

Type of Instrument: MORTGAGE
Number of Pages: 38
Receipt Number : 20-0020860
MORTGAGE NUMBER: DK039095

Recorded: 02/03/2020
At: 04:49:57 PM

LIBER: M00023102
PAGE: 584

Not For Legal Use

District:	Section:	Block:	Lot:
0900	134.00	02.00	014.015

EXAMINED AND CHARGED AS FOLLOWS

Not For Legal Use

Mortgage Amount: $4,833,300.00

Received the Following Fees For Above Instrument

		Exempt			Exempt
Page/Filing	$190.00	NO	Handling	$20.00	NO
COE	$5.00	NO	NYS SRCHG	$15.00	NO
Affidavit	$0.00	NO	Notation	$0.00	NO
Cert.Copies	$0.00	NO	RPT	$200.00	NO
RPT-MTG Fee	$200.00	NO	Mort.Basic	$21,666.50	NO
Mort.Addl	$12,999.90	NO	Mort.SplAddl	$0.00	NO
Mort.SplAsst	$10,833.25	NO			

Fees Paid $46,129.65

MORTGAGE NUMBER: DK039095

THIS PAGE IS A PART OF THE INSTRUMENT
THIS IS NOT A BILL

JUDITH A. PASCALE
County Clerk, Suffolk County

Not For Legal Use

1 2

Number of pages 38

This document will be public record. Please remove all Social Security Numbers prior to recording.

RECORDED
2020 Feb 03 04:49:57 PM
JUDITH A. PASCALE
CLERK OF
SUFFOLK COUNTY
L M00023102
P 584
DK039095

Deed / Mortgage Instrument	Deed / Mortgage Tax Stamp	Recording / Filing Stamps

3 FEES

Page / Filing Fee 190

Handling 250.00

TP-584

Notation

EA-52 17 (County)

EA-5217 (State)

R.P.T.S.A. 200

Comm. of Ed. 5. 00

Affidavit

Certified Copy

NYS Surcharge 15. 00

Other 200

Sub Total 210.00

Sub Total 420

Grand Total 630.00

CG

Mortgage Amt. 4,333,350

1. Basic Tax

2. Additional Tax

Sub Total

Spec./Assit.

or

Spec. /Add.

TOT. MTG. TAX 45,499.65

Dual Town ____ Dual County ____

Held for Appointment ____

Transfer Tax

Mansion Tax

The property covered by this mortgage is or will be improved by a one or two family dwelling only.

YES 1 or NO #2

If NO, see appropriate tax clause on page # 2 of this instrument.

4 Dist. 0900 Section 134.00 Block 02.00 Lot 014.115

0900 13400 0200 014015

5 Community Preservation Fund

Consideration Amount $ 4,333,350

CPF Tax Due $ ____

Real Property Tax Service Agency Verification

4021526

PTS
R DTY A
26-DEC-19

Improved ____

Vacant Land ____

TD ____

TD ____

TD ____

6 Satisfactions/Discharges/Releases/List Property Owners Mailing Address

RECORD & RETURN TO:

Attn: Lending Department
Goldman Sachs Bank USA
c/o Genesis Capital, LLC
15303 Ventura Boulevard, Suite 700
Sherman Oaks, CA 91403

Mail to: Judith A. Pascale, Suffolk County Clerk
310 Center Drive, Riverhead, NY 11901
www.suffolkcountyny.gov/clerk

7 Title Company Information

Co. Name National Land Tenure

Title # NLT-29613-S-19

8 Suffolk County Recording & Endorsement Page

This page forms part of the attached Building Loan Mortgage made by: (SPECIFY TYPE OF INSTRUMENT)

Rose Way, LLC

TO

Goldman Sachs Bank USA

The premises herein is situated in SUFFOLK COUNTY, NEW YORK.

In the TOWN of Southampton

In the VILLAGE

or HAMLET of ____

BOXES **6** THRU **8** MUST BE TYPED OR PRINTED IN BLACK INK ONLY PRIOR TO RECORDING OR FILING.

(over)

Not For Legal Use

IMPORTANT NOTICE

If the document you've just recorded is your SATISFACTION OF MORTGAGE, please be aware of the following:

Not For Legal Use

If a portion of your monthly mortgage payment included your property taxes, *you will now need to contact your local Town Tax Receiver so that you may be billed directly for all future property tax statements.

Local property taxes are payable twice a year: on or before January 10th and on or before May 31st. Failure to make payments in a timely fashion could result in a penalty.

Not For Legal Use

Please contact your local Town Tax Receiver with any questions regarding property tax payment.

Not For Legal Use

Babylon Town Receiver of Taxes
200 East Sunrise Highway
North Lindenhurst, N.Y. 11757
(631) 957-3004

Brookhaven Town Receiver of Taxes
One Independence Hill
Farmingville N.Y. 11738
(631) 451-9009

Not For Legal Use

East Hampton Town Receiver of Taxes
300 Pantigo Place
East Hampton, N.Y. 11937
(631) 324-2770

Huntington Town Receiver of Taxes
100 Main Street
Huntington, N.Y. 11743
(631) 351-3217

Islip Town Receiver of Taxes
40 Nassau Avenue
Islip, N.Y. 11751
(631) 224-5580

Riverhead Town Receiver of Taxes
200 Howell Avenue
Riverhead, N.Y. 11901
(631) 727-3200

Shelter Island Town Receiver of Taxes
Shelter Island Town Hall
Shelter Island, N.Y. 11964
(631) 749-3338

Smithtown Town Receiver of Taxes
99 West Main Street
Smithtown, N.Y. 11787
(631) 360-7610

Southampton Town Receiver of Taxes
116 Hampton Road
Southampton, N.Y. 11968
(631) 283-6514

Southold Town Receiver of Taxes
53095 Main Street
Southold, N.Y. 11971
(631) 765-1803

Sincerely,

Judith A. Pascale

Judith A. Pascale
Suffolk County Clerk

dw
2/99

12-0104.. 06/06kd

Not For Legal Use

BUILDING LOAN MORTGAGE
AND SECURITY AGREEMENT

Not For Legal Use

in the amount of $4,333,350.00

Between

ROSE WAY LLC
a New York limited liability company

Not For Legal Use

("Mortgagor")

and

GOLDMAN SACHS BANK USA,
a New York chartered bank

Not For Legal Use

("Mortgagee")

Dated: November 1, 2019

Not For Legal Use

Property Address: 114 Rose Way, Bridgehampton, NY 11932

Section: 134.00
Block: 02.00
Lots: 014.115
County: Suffolk
State: New York

DOCUMENT PREPARED BY AND WHEN RECORDED, RETURN TO:

Goldman Sachs Bank USA,
a New York chartered bank
c/o Genesis Capital, LLC
Attention Lending Department
15303 Ventura Blvd., Suite 700
Sherman Oaks, CA 91403

Not For Legal Use

THIS MORTGAGE **(DOES / DOES NOT (CIRCLE ONE)** ENCUMBER REAL PROPERTY PRINCIPALLY IMPROVED OR TO BE IMPROVED BY ONE OR MORE STRUCTURES CONTAINING IN THE AGGREGATE NOT MORE THAN SIX (6) RESIDENTIAL DWELLING UNITS HAVING THEIR OWN SEPARATE COOKING FACILITIES.

Not For Legal Use

BUILDING LOAN MORTGAGE AND SECURITY AGREEMENT

THIS BUILDING LOAN MORTGAGE AND SECURITY AGREEMENT ("Mortgage"), dated this 1st day of November in the year 2019, from ROSE WAY LLC, a New York limited liability company having an address at 10 Phillips Lane, Southampton, NY 11968 ("Mortgagor"), to GOLDMAN SACHS BANK USA, a New York chartered bank, having an address at c/o Genesis Capital, LLC, 9336 Ventura Boulevard, Suite 700, Sherman Oaks, CA 91403 ("Mortgagee").

Not For Legal Use

DEFINITIONS

Not For Legal Use

The Mortgagor and the Mortgagee agree that, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified, such definitions to be applicable equally to the singular and to the plural forms of such terms.

Not For Legal Use

"Loan" means the loan in the original principal amount of ~~up to~~ $4,333,350.00 evidenced and/or secured by the Note (as hereinafter defined), this Mortgage, the Building Loan Agreement (as hereinafter defined) and all underlying loan documents as the same may hereafter be modified, amended, renewed or extended.

"Building Loan Agreement" means the Building Loan Agreement dated of even date herewith between the Mortgagee, as lender, and the Mortgagor, as borrower, relating to the premises as the same may hereafter be modified, amended, renewed or extended.

"Chattels" means all fixtures, fittings, appliances, apparatus, equipment, machinery and articles of personal property, and additions thereto and replacements thereof, now or hereafter owned by the Mortgagor or in which the Mortgagor has or shall have an interest, now or at any time hereafter affixed to, attached to, placed upon, or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of, the Improvements (as hereinafter defined) or the Premises (as hereinafter defined), including all building materials owned by the Mortgagor or in which the Mortgagor has, or shall have, an interest, whether stored on or off the Premises, excluding any artwork situated at the Mortgaged Property (as defined hereunder).

"Event of Default" means an event of default described as such in Section 2.01 hereof.

"Improvements" means all structures and buildings, and replacements thereof, now or hereafter located or erected upon the Premises, including all Chattels of every kind and nature whatsoever forming part of said structures and/or buildings.

Not For Legal Use

"Intangibles" means all "general intangibles" (as such term is defined in the Uniform Commercial Code adopted in New York State, as the same may from time to time be in effect (the "Code")) in any way relating to the Premises and/or the Improvements and in which the Mortgagor has any interest, including, without limitation, all licenses, trade names, goodwill and books and records relating to the Premises, the construction of any Improvements, and/or to the business operated or to be operated on the Premises or any part thereof, and all unearned premiums, accrued, accruing or to accrue under all insurance policies now or hereafter obtained by the Mortgagor insuring the Mortgaged Property (as hereinafter defined), and all rights and interests of Mortgagor thereunder.

Not For Legal Use

"Involuntary Rate" means the Default Rate as set forth in the Note, but in no event to exceed the maximum rate allowed by law.

Not For Legal Use

"Note" means that certain Building Loan Note in the original principal amount of ~~up to~~ FOUR MILLION THREE HUNDRED THIRTY THREE THOUSAND THREE HUNDRED FIFTY AND 00/100 DOLLARS ($4,333,350.00) dated of even date herewith, made by the Mortgagor payable to the order of the Mortgagee, as the same may be modified, amended, renewed or extended from time to time.

Not For Legal Use

"Premises" means all that certain plot, piece or parcel of land owned by the Mortgagor as more particularly described in Schedule A hereto, together with all of the Improvements thereon, air space, easements, rights, privileges, royalties and appurtenances belonging or in any way appertaining thereunto, and all of the estate, right, title, interest, claim or demand whatsoever of the Mortgagor therein and in the streets, alleys and ways adjacent thereto, either at law or in equity, in possession or expectancy, now or hereafter acquired.

All terms of this Mortgage that are not defined above shall have the meaning set forth in this Mortgage.

GRANTING CLAUSE

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the payment of the principal of the Note, the interest thereunder, and any other sums payable thereunder and/or under this Mortgage and the Building Loan Agreement (collectively, "Indebtedness"), and the performance and observance of all the provisions of the Building Loan Agreement, this Mortgage and the Note, the Mortgagor hereby gives, grants, bargains, sells, warrants, alienates, premises, releases, conveys, assigns, transfers, mortgages, hypothecates, deposits, pledges, sets over and confirms unto the Mortgagee all the Mortgagor's estate, right, title and interest in, to and under any and all of the following described property ("Mortgaged Property"), whether now owned or held or hereafter acquired:

(a) the Premises;

(b) the Improvements;

Not For Legal Use

(c) the Chattels;

Not For Legal Use

(d) the Intangibles;

(e) all leases, subleases, lettings, licenses and other uses and occupancies of the Premises now or hereafter entered into and all right, title and interest of the Mortgagor thereunder, together with the rents, issues, income and profits thereof including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases (except that the Mortgagor shall as licensee of the Mortgagee have the right to collect such rents and other amounts, subject to provisions of this Mortgage, so long as no Event of Default shall have occurred and be continuing) and all guaranties of the obligations of the tenants, subtenants, lessees, licensees, users or occupants thereunder;

Not For Legal Use

(f) all agreements and/or contracts now or hereafter entered into by the Mortgagor relating to the sale, leasing, brokerage, development, construction (including architectural and engineering contracts), equipping, management, maintenance, marketing, and/or operation of the Premises or the Improvements, including all moneys due and to become due thereunder;

Not For Legal Use

(g) the plans and specifications and working drawings relating to the construction of any Improvements at the Premises;

Not For Legal Use

(h) all books and records relating to the operation of the Premises and/or the construction of any Improvements;

(i) all options and agreements with respect to any additional real property for the use or development in connection with operation of the Premises and/or construction of any Improvements;

(j) all Chattel Paper, Accounts, Inventory and Instruments, as such terms are defined in the Code;

(k) all consents, certificates, authorizations, variances, waivers, licenses, permits and approvals from any governmental authority relating to the Premises and/or the construction of any Improvements; and

(l) all proceeds of the conversion, voluntary or involuntary, or any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of hazard and title insurance and condemnation awards.

TO HAVE AND TO HOLD unto the Mortgagee, its successors and assigns forever.

Not For Legal Use

ARTICLE I

PARTICULAR COVENANTS OF THE MORTGAGOR

Not For Legal Use

The Mortgagor covenants and agrees as follows:

Section 1.01. (a) Mortgagor represents and warrants that it has and will continue to hold good and marketable title to an indefeasible fee estate in the Premises subject to no lien, charge or encumbrance, except such as are listed as exceptions in Schedule B attached hereto ("Permitted Exceptions").

Not For Legal Use

(b) Mortgagor represents and warrants: (i) that it is the owner of, and shall own, the Mortgaged Property free and clear of all liens and claims, other than the Permitted Exceptions, (ii) that this Mortgage is and shall remain a valid and enforceable second lien on the Mortgaged Property subject only to the Permitted Exceptions, (iii) that the execution and delivery of this Mortgage, the Note, and the Building Loan Agreement have been duly authorized by the Mortgagor and that there is no provision in any document evidencing or establishing the existence of the Mortgagor that requires the further consent for such action by any other entity or person, (iv) that it is duly organized, validly existing and is in good standing under the laws of the State of New York and in good standing under and by virtue of the laws of the State of New York, (v) that it has all necessary licenses, authorizations, registrations, permits and/or approvals, and full power and authority, to own its properties and carry on its business as currently conducted, (vi) that the execution and delivery by it of, and performance of its obligations under this Mortgage, the Note, and the Building Loan Agreement shall not result in the Mortgagor being in default under any provision of any document evidencing or establishing the existence of the Mortgagor or of any mortgage, credit or other agreement to which the Mortgagor is a party or that affects the Mortgagor or the Premises, or any part thereof, (vii) that it shall preserve its fee simple title in and to the Premises and shall forever warrant and defend the same to the Mortgagee, (viii) that it shall forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever and (ix) that the execution, delivery and performance of this Mortgage has been duly authorized by all necessary action by Mortgagor and shall not conflict with, result in a violation of, or constitute a default under (A) any of Mortgagor's organizational documents or (B) any other agreement or instrument binding on Mortgagor.

Not For Legal Use

Not For Legal Use

Section 1.02. The Mortgagor shall, at its sole cost and expense, and without expense to the Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as the Mortgagee shall from time to time reasonably require, for the better assuring, conveying, assigning, transferring and confirming unto the Mortgagee the Mortgaged Property and the rights hereby conveyed or assigned or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey or assign to the Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage and, on demand, shall execute and deliver, and hereby authorizes the Mortgagee to execute and file in the name of the Mortgagor to the extent it may lawfully do so.

Not For Legal Use

one or more financing statements to evidence more effectively the lien hereof upon the Mortgaged Property or any part thereof.

Not For Legal Use

Section 1.03 (a) The Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter from time to time, shall, at the sole cost of the Mortgagor, cause this Mortgage and any security instrument creating a lien or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance, to be filed, registered and/or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and to fully protect the lien hereof upon, and the interest of the Mortgagee in, the Mortgaged Property.

Not For Legal Use

(b) The Mortgagor shall pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property, and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note, the Building Loan Agreement, this Mortgage or any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance.

Not For Legal Use

Section 1.04. The Mortgagor shall punctually pay the principal and interest and all other sums to become due in respect of the Note at the time and place and in the manner specified in the Note, according to the true intent and meaning thereof, all in any coin or currency of the United States of America that at the time of such payment shall be legal tender for the payment of public and private debts and all such principal and interest due in respect of the Note is hereby deemed an obligation due under and secured by this Mortgage.

Section 1.05. Mortgagor represents and warrants that Mortgagor shall, so long as it is owner of the Mortgaged Property or any part thereof, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a limited liability company under the laws of the State of New York and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Mortgagor or to the Mortgaged Property or any part thereof.

Section 1.06. All right, title and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property hereafter acquired by, or released to, the Mortgagor, or constructed, assembled or placed by the Mortgagor on the Premises or any part thereof, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by the Mortgagor or Mortgagee, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described in the granting clause hereof, but at any and all times the Mortgagor shall execute and deliver to the Mortgagee any and all such further assurances, mortgages, conveyances or

Not For Legal Use

assignments thereof as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

Not For Legal Use

Section 1.07 (a) The Mortgagor, from time to time when the same shall become due and payable, shall pay and discharge all taxes of every kind and nature, all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, and all other public charges whether of a like or different nature, imposed upon or assessed against the Mortgaged Property, or any part thereof, or upon the revenue, rents, issues, income and profits of the Mortgaged Property, or any part thereof, or arising in respect of the occupancy, use or possession thereof. In default thereof the Mortgagee may, but shall be under no obligation to, pay the same, and the Mortgagor shall repay the same to the Mortgagee with interest and the same shall be a lien of the Premises secured on this Mortgage. The Mortgagor shall deliver to the Mortgagee receipts evidencing the payment of all such taxes, assessments, levies, fees, rents and other public charges imposed upon or assessed against the Mortgaged Property, or any part thereof, or the revenues, rents, issues, income or profits thereof, promptly upon the payment thereof within ten (10) days of the final date for payment of such charge without the imposition of interest or penalty. The Mortgagee may, at its option, require the deposit by the Mortgagor with the Mortgagee, at the time of each payment of an installment of interest or principal under the Note, of an additional amount sufficient to discharge the obligations under this subsection (a) plus one-twelfth of the annual insurance premiums as provided for in Section 1.09(a) hereof. The determination of the amount so payable and of the fractional part thereof to be deposited with the Mortgagee, so that the aggregate of such deposit shall be sufficient for this purpose, shall be made by the Mortgagee in its sole and reasonable discretion. Such amounts shall be held by the Mortgagee without interest and applied to the payment of the obligations in respect to which such amounts were deposited on or before the respective dates on which the same or any of them would become delinquent or, at the option of the Mortgagee, but only if an Event of Default shall have occurred and shall be continuing, to the payment of any amount due under the Note or hereunder (including principal, interest and late charges) in such order or priority as the Mortgagee shall determine. If one (1) month prior to the due date of any of the aforementioned obligations, the amounts then on deposit therefor shall be insufficient for the payment of such obligation in full, the Mortgagor, within five (5) days after demand by the Mortgagee, shall deposit the amount of the deficiency with the Mortgagee. Nothing herein contained shall be deemed to affect any right or remedy of the Mortgagee under any provision of this Mortgage or of any statute or rule of law to pay any such amount and to add the amount so paid to the Indebtedness. The Mortgagor hereby grants the Mortgagee a security interest in any and all such funds to secure the repayment of the Indebtedness.

(b) Nothing in this Section 1.07 shall require the payment or discharge of any obligation imposed upon the Mortgagor by this Section 1.07 so long as the Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same; provided that during such contest the Mortgagor shall, at the option of the Mortgagee, provide security satisfactory to the Mortgagee assuring the discharge of the Mortgagor's obligation under this Section 1.07 and of any additional charge, penalty or expense arising from or incurred as a result of such contest; and provided further that if, at any time, payment of any obligation imposed

Not For Legal Use

upon the Mortgagor by subsection (a) of this Section 1.07 shall become necessary to prevent the delivery of a tax deed, or its equivalent, conveying the Mortgaged Property, or any part thereof, because of non-payment, then the Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed or its equivalent.

Not For Legal Use

Section 1.08. (a) The Mortgagor shall pay, or adequately bond, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers and others, which claims and demands, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom and in general shall do or cause to be done everything necessary so that the lien on this Mortgage shall be fully preserved, at the cost of the Mortgagor, without expense to the Mortgagee.

Not For Legal Use

(b) The Mortgagor shall pay any and all taxes, charges, fees and/or levies by reason of Mortgagee's ownership of the Note or this Mortgage and/or resulting from the exercise by Mortgagee of any of its rights and/or remedies provided for under this Mortgage, except for income taxes of the Mortgagee. The obligations assumed by Mortgagor pursuant to this Section 1.08 shall survive the exercise by the Mortgagee of any of its rights and/or remedies under this Mortgage.

Not For Legal Use

Section 1.09. (a) The Mortgagor, at its sole cost and expense, shall maintain the following insurance:

Not For Legal Use

(i) Fire insurance in the so-called "Builder's Risk, Completed Value, Non-Reporting Form", or other form approved by the Mortgagee, with "all-risk" extended coverage (including vandalism and malicious mischief) and coverage for "completion and/or premises occupancy" for the full insurable value of all work incorporated in the Improvements and all materials and equipment on or about the Premises intended for permanent use in the Improvements or incident to the construction thereof (such insurance shall only be required during the Building Loan Term, as such term is defined in the Building Loan Agreement executed immediately following this Mortgage).

(ii) Insurance on the Improvements and the Chattels against loss or damage by fire and against loss or damage by other risks now or hereafter embraced by "All-Risks" insurance, so called, in an amount sufficient to prevent the Mortgagor from becoming a co-insurer under the applicable policies but, in any event, not less than $1,000,000.00 without deduction for depreciation, and agreed amount endorsement satisfactory to the Mortgagee.

(iii) Comprehensive general liability insurance (with contractual liability on an occurrence basis and including blanket contractual liability, completed operations and personal injury coverage) against claims for bodily injury, death or property damage occurring on, in or about the Premises, such insurance to afford protection, during the term of this Mortgage, in such amounts as the Mortgagee may from time to time require (but not less than $1,000,000 per occurrence and $2,000,000 in the aggregate).

Not For Legal Use

(iv) Worker's compensation insurance, in accordance with all applicable statutory requirements.

Not For Legal Use

(v) Insurance against loss or damage from (A) leakage of sprinkler systems and (B) explosion of steam boilers, air conditioning equipment, pressure vessels or similar apparatus now or hereafter installed in the Premises, in form and in such amounts as the Mortgagee shall from time to time require.

(vi) Rent and/or business interruption insurance for loss occasioned by the perils commonly insured in the "All Risks" policy, so-called, in an amount not less than one year's gross income from the Premises plus the annual real estate taxes thereon.

Not For Legal Use

(vii) Insurance in such amounts as may from time to time be reasonably required by the Mortgagee, against such other insurable casualties, hazards or risks as shall from time to time commonly be insured against in the case of premises comparable to the Premises.

Not For Legal Use

Each policy of insurance required by clauses (i), (ii), (iv), (v), (vi) and (vii) of this subdivision (a) of this Section 1.09 shall contain the standard non-contributory mortgagee endorsement in favor of the Mortgagee, shall name the Mortgagee as loss payee of any and all proceeds payable under such insurance, and shall provide that the Mortgagee shall have the sole and exclusive right to adjust any insurance awards. All policies of insurance required by clause (iii) of this subdivision (a) of this Section 1.09 shall be written on an "on occurrence" basis and shall name the Mortgagee as an additional insured.

Not For Legal Use

All insurance policies and endorsements required pursuant to this Section 1.09 shall be fully paid for, nonassessable and contain such provisions and expiration dates and be in such form and amounts and issued by such insurance companies as shall be satisfactory to the Mortgagee and shall not exclude vacant properties for any type of dwellings. Without limiting the foregoing, each policy shall specifically provide that (A) such policy may not be canceled or modified except upon thirty (30) days prior written notice to the Mortgagee via certified mail and that no act or thing done by the Mortgagor shall invalidate the policy as against Mortgagee and (B) any and all insurance proceeds shall be paid to the Mortgagee. In addition, from time to time, upon the occurrence of any change in the use, operation or value of the Premises, or in the availability of insurance in the area in which the Premises are located, the Mortgagor shall, within ten (10) business days after demand by the Mortgagee, take out such additional amounts and/or require other kinds of insurance as the Mortgagee may reasonably require. The Mortgagor shall assign and deliver the policies of all such insurance to the Mortgagee, in such manner and form that the Mortgagee and its successors and assigns shall at all times have and hold said policy or policies as collateral and further security for the payment of the Indebtedness until the full payment of the Indebtedness.

(b) The Mortgagor shall not take out separate insurance concurrent in form or contribution in the event of loss with that required to be maintained under this Section 1.09, unless the Mortgagee is included thereon as a named insured with loss payable to the Mortgagee under a standard mortgagee endorsement of the character above described. The Mortgagor shall

Not For Legal Use

immediately notify the Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to the Mortgagee the policy or policies of such insurance.

Not For Legal Use

(c) If the Premises, or any part thereof, are now or hereafter located in an area identified by the Federal Emergency Management Agency or the Federal Insurance Administration as a "100 year flood plain" or as having special flood hazards (including Zones A and V), the Mortgagor shall keep, for as long as any Indebtedness remains unpaid, the Premises covered by flood insurance in an amount at least equal to the full amount of the Note or the maximum limit of coverage available for the Premises under the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1983, as the same may have been or may hereafter be amended or modified (and any successor act thereto), whichever is less, naming Mortgagee as an additional insured party.

Not For Legal Use

(d) The Mortgagor shall give the Mortgagee prompt notice of any loss covered by insurance and the Mortgagee shall have the right to join the Mortgagor in adjusting any loss. Notwithstanding anything to the contrary contained herein or in Section 254 of the Real Property Law or any other provision of applicable law, the proceeds of insurance policies coming into the possession of the Mortgagee shall not be deemed trust funds. Mortgagee shall have the option in its sole discretion to apply any insurance proceeds it may receive pursuant hereto, or otherwise, to the payment of the Indebtedness, or to allow all or a portion of such proceeds to be used for the restoration of the Premises without affecting the lien of this Mortgage for the full amount of the Indebtedness owing prior to receipt of such proceeds. In the event any such insurance proceeds shall be used to reduce the Indebtedness, the same shall be applied by the Mortgagee, after the deduction therefrom and repayment to the Mortgagee of any and all costs and expenses incurred by the Mortgagee in the recovery thereof, in any manner Mortgagee shall designate including but not limited to, the application of such proceeds to the then unpaid installments of the principal balance due under the Note in the inverse order of their due dates, such that the regular payments, if any, under the Note shall not be reduced or altered in any manner.

Not For Legal Use

Not For Legal Use

(e) All insurance provided for in this Section 1.09 shall be effected under valid and enforceable policies issued by financially responsible insurers having a general policyholder's and financial rating of not less than "A", as rated in the most currently available Best's Insurance Reports (or an equivalent rating with a publication of a similar nature if Bests Insurance Reports is no longer being published), and incorporated under the Laws of the United States or any state thereof and authorized to do business in the State of New York and which are approved in writing by the Mortgagee. It is further agreed that the aggregate amount of coverage underwritten by any insurer in conformance with the provisions of this Mortgage shall not exceed 10% of that insurer's surplus to policyholders. Upon the execution of this Mortgage and thereafter, not less than thirty (30) days prior to the expiration dates of the expiring policies theretofore furnished pursuant to this Section or any other Section of this Mortgage, originals or certified copies of the policies bearing notations evidencing the payment of not less than six month's of the first annual premium, shall be delivered by the Mortgagor to the Mortgagee. In the event Mortgagor has not prepaid the outstanding balance of secured by this Mortgage and any sums owing to Mortgagee under any other Security Agreement prior to the six month anniversary of the date of this Mortgage, then, in such event, Mortgagor shall pay on or before

Not For Legal Use

the first anniversary of this Mortgage the remaining premium for the balance of the first year of insurance. Mortgagor's failure to pay such premium balance shall constitute an Event of Default under this Mortgage.

Not For Legal Use

(f) If the Mortgagor shall fail to procure, pay for or deliver to the Mortgagee any policy or policies of insurance and/or renewals thereof as in this Section 1.09 required, the Mortgagee may, at its option, but shall be under no obligation to do so, effect such insurance and pay the premium therefor, and the Mortgagor shall immediately repay to the Mortgagee any premiums so paid, with interest thereon at the Involuntary Rate. Any amount so expended by the Mortgagee, with interest thereon at the Involuntary Rate, shall be secured by the lien of this Mortgage. The Mortgagor hereby waives any claim against the Mortgagee by reason of the failure of the Mortgagee to (i) notify the Mortgagor of the cancellation or non-renewal of any insurance required by this Section 1.09 or (ii) effect any such insurance.

Not For Legal Use

(g) The Mortgagee may, at its option, to be exercised by thirty (30) days written notice to the Mortgagor, require the deposit by the Mortgagor, at the time of each payment of an installment of interest or principal under the Note, of an additional amount sufficient to pay the insurance premiums due for the insurance required under this Section 1.09 when such premiums become due. The determination of the amount so payable and of the fractional part thereof to be deposited with the Mortgagee, so that the aggregate of such deposit shall be sufficient for this purpose, shall be made by the Mortgagee in its sole and reasonable discretion. Such amounts shall be held by the Mortgagee without interest and applied to the payment of the premiums in respect to which such amounts were deposited on or before the respective dates on which the same or any of them would become delinquent or, at the option of the Mortgagee, but only if an Event of Default shall have occurred and shall be continuing, to the payment of any amount due under the Note or hereunder (including principal, interest and late charges) in such order or priority as the Mortgagee shall determine. If one (1) month prior to the due date of any of the aforementioned premiums, the amounts then on deposit therefor shall be insufficient for the payment of such premiums in full, the Mortgagor, within five (5) days after demand by the Mortgagee, shall deposit the amount of the deficiency with the Mortgagee. Nothing herein contained shall be deemed to affect any right or remedy of the Mortgagee under any provision of this Mortgage or of any statute or rule of law to pay any such amount and to add the amount so paid to the Indebtedness. The Mortgagor hereby grants the Mortgagee a security interest in any and all such funds to secure the repayment of the Indebtedness.

Not For Legal Use

(h) Subject to the terms of 1.09(d) above, the Mortgagee shall permit the Mortgagor to use the insurance proceeds for the restoration of the Mortgaged Property, provided that (i) the net insurance proceeds are sufficient in the opinion of the Mortgagee on advice from Mortgagee's architect to restore the Mortgaged Property, or if such proceeds are insufficient to restore the Mortgaged Property, Mortgagor shall have deposited with the Mortgagee cash in an amount equal to the difference between the cost of such restoration and such proceeds, (ii) there shall exist no Event of Default, nor any event which, after notice or the passage of time would become an Event of Default, and (iii) in the opinion of the Mortgagee on advice from Mortgagee's architect the Mortgaged Property can be completely restored within 180 days from the occurrence of such casualty or by Maturity Date (as defined in the Note), whichever comes first. In the event insurance proceeds are used to repair or restore the Mortgaged Property

Not For Legal Use

pursuant to this subsection, Mortgagor shall obtain, at its sole cost and expense, an architect who shall submit plans to the Mortgagee for the repair or restoration of the Mortgaged Property indicating that such repair or restoration can be completed within the period provided for herein, together with a budget itemizing the projected costs of such repair or restoration. Said plans and budget are subject to the approval of the Mortgagee. Mortgagor shall also obtain and post, at its sole cost and expense, all necessary Federal, State and local permits and approvals prior to the commencement of such repair or restoration. Mortgagor agrees that all insurance proceeds to be used to repair or restore the Mortgaged Property shall be held by the Mortgagee and disbursed periodically: (i) on advice from the Mortgagee's architect (who shall be employed by Mortgagee at Mortgagor's sole expense) that the work completed or materials installed conform to said budget and plans, as approved by the Mortgagee; and (ii) upon presentment of receipted bills and releases satisfactory to the Mortgagee. The expenses incurred by the Mortgagee, including reasonable architects' and reasonable attorneys' fees, and all soft and hard costs in connection with such restoration, shall be paid by Mortgagor to the extent insurance proceeds are insufficient to pay same. At no time shall the Mortgagee be obligated to disburse any funds if the undisbursed balance is, in the opinion of the Mortgagee based on advice from its architect, insufficient to timely complete the restoration of the Mortgaged Property free and clear of all liens or if the advance of funds will, in the opinion of the Mortgagor, adversely affect the priority of the lien of this Mortgage. The Mortgagor agrees to post such bonds, obtain such guaranteed maximum price general contract agreement and/or enter into such agreements and arrangements as the Mortgagee may require to insure lien-free completion of such repairs or restoration by the end of the period provided herein for completion of such repairs or restoration.

(i) The provisions of subsection 4 of Section 254 of the New York Real Property Law covering the insurance of buildings against loss by fire shall not apply to this Agreement. In the event of any conflict, inconsistency or ambiguity between the provisions of Section 1.09 of this Mortgage and the provisions of subsection 4 of Section 254 of the New York Real Property Law covering the insurance of buildings against loss by fire, the provisions of Section 1.09 of this Mortgage shall control."

(j) The clauses and covenants contained in this Mortgage that are construed by Section 254 of the New York Real Property Law shall be construed as provided in Section 254. The additional clauses and covenants contained in this Mortgage shall afford rights supplemental to and not exclusive of the rights conferred by the clauses and covenants construed by Section 254 and shall not impair, modify, alter or defeat such rights, notwithstanding that such additional clauses and covenants may relate to the same subject matter or provide for different or additional rights in the same or similar contingencies as the clauses and covenants construed by Section 254. The rights of Mortgagee arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be in exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding. In the event of any inconsistencies between the provisions of Section 254 and the provisions of this Mortgage or the Loan Agreement, the provisions of the Mortgage and the Loan Agreement shall prevail."

Not For Legal Use

(k) Notwithstanding anything to the contrary herein, until such time as this Mortgage has been satisfied, the Mortgagee shall have the right, at any time, to request that the Mortgagor obtain additional insurance policies or change and modify its existing insurance policies to comply with the Mortgagee's requests it being understood and agreed by the Mortgagor that it shall comply with any and all insurance requirements imposed by the Mortgagee.

Not For Legal Use

Section 1.10. If the Mortgagor shall fail to perform any of the covenants contained in Sections 1.01, 1.03, 1.04, 1.07, 1.08, 1.09 or 1.12 hereof, the Mortgagee may make advances to perform the same on Mortgagors' behalf, and all sums so advanced shall be a lien upon the Mortgaged Property and shall be secured hereby. The Mortgagor shall repay on demand by Mortgagee all such sums so advanced by Mortgagee on Mortgagor's behalf with interest at the Involuntary Rate. The provisions of this Section 1.10 shall not prevent any default in the observance by Mortgagor of any covenant contained in Sections 1.01, 1.03, 1.04, 1.07, 1.08, 1.09 or 1.12 hereof from constituting an Event of Default.

Not For Legal Use

Section 1.11 (a) The Mortgagor shall keep adequate records and books of account in accordance with the principles of the cash basis method of accounting, consistently applied, and shall permit the Mortgagee, by its agents, accountants and attorneys, to visit and inspect the Premises and examine the Mortgagor's records and books of account and to discuss its affairs, finances and accounts with the partners or officers, accountants, employees, attorneys and agents of the Mortgagor, at such reasonable times as may be requested by the Mortgagee upon reasonable notice.

Not For Legal Use

(b) The Mortgagor shall deliver to the Mortgagee (i) with reasonable promptness after the close of each fiscal year of the Mortgagor, but in no event later than ninety (90) days thereafter, the Mortgagor's statement of income, balance sheet, statement of cash flow and statement of contingent liabilities for such fiscal year, together with all schedules appurtenant thereto, prepared in accordance with the principles of the cash basis method of accounting, consistently applied, and reviewed by an independent certified public accountant, satisfactory to the Mortgagee, and which financial statements shall be signed by Mortgagor and each Guarantor (as defined in the Building Loan Agreement) to certify that said financial statements are true, accurate and complete and that no events have occurred subsequent to the date of said statements that have or would cause a material adverse change in the financial conditions represented therein, (ii) with reasonable promptness after the close of each fiscal year of the Mortgagor, but in no event later than ninety (90) days thereafter, the rent roll for the Premises as described in Section 1.11(d) of this Mortgage, (iii) with reasonable promptness after the close of each fiscal quarter of the Mortgagor, but in no event later than thirty (30) days thereafter, a statement of income and a balance sheet for such quarter, along with a statement of sources and uses of funds for such quarter with respect to any and all accounts of the Mortgagor maintained with the Mortgagee, together with all schedules appurtenant thereto, which statements shall be signed by Mortgagor and each Guarantor to certify that said financial statements are true, accurate and complete and that no events have occurred subsequent to the date of said statements that have or would cause a material adverse change in the financial conditions represented therein, and (iv) with reasonable promptness after its filing with the

Not For Legal Use

applicable governmental authority, but in no event later than fifteen (15) days thereafter, copies of the Mortgagor's filed Federal Income Tax Return with all schedules appurtenant thereto.

Not For Legal Use

(c) The Mortgagor shall cause Guarantor to deliver to the Mortgagee: (i) with reasonable promptness after the end of each year (i.e. December 31st), their personal financial statements delivered on the Mortgagee's form which financial statements shall be signed by Guarantor to certify that said financial statements are true, accurate and complete and that no events have occurred subsequent to the date of said statements that have or would cause a material adverse change in the financial conditions represented therein, and (ii) with reasonable promptness after its filing with the applicable governmental authority, but in no event later than forty-five (45) days thereafter, copies of Guarantor's filed Federal Income Tax Return, and all schedules appurtenant thereto. Mortgagee, however, shall have the option of requiring Mortgagor to deliver annual financial statements reviewed by a certified public account and financial statements conforming to the requirements set forth in subsection 1.11(b)(iii) on a quarterly basis.

Not For Legal Use

(d) The Mortgagor, within fifteen (15) days after written request, shall deliver to the Mortgagee a current rent roll of the Premises showing the names of tenants, space occupied by each tenant, rent paid by each tenant (gross and per square foot), lease security if any, lease or occupancy expiration dates, options for renewal, rental during renewal terms, cancellation provisions and other relevant information.

Not For Legal Use

(e) The Mortgagor shall, within five (5) business days after written request from the Mortgagee, furnish the Mortgagee a written statement, duly acknowledged, of the amount due whether for principal or interest under the Note and whether any offsets, counterclaim or defenses exist against payment of the Indebtedness or any part thereof.

(f) The Mortgagor, with reasonable promptness, shall deliver or cause to be delivered to the Mortgagee such other information (financial or otherwise) with respect to the Mortgagor or any Guarantor as the Mortgagee may reasonably request from time to time.

(g) In the event Borrower or any Guarantor fails to provide the financial documents required to be delivered pursuant to the Mortgage, the Guaranty (as defined in the Building Loan Agreement) or any of the other loan documents within the time periods set forth in the Mortgage, the Guaranty or any of the other loan documents and such failure continues for thirty (30) days following written demand from Lender, the interest rate under the Loan shall be increased by five (5%) percent and such increase shall remain in effect until such time as Borrower or Guarantor deliver all of the required financial documents.

Section 1.12. The Mortgagor shall not commit any waste on the Mortgaged Property, or any part thereof, nor make any change in the use of the Mortgaged Property, nor any part thereof, which shall in any way increase any ordinary fire or other hazard arising out of alteration, construction or operation. The Mortgagor shall, at all times, maintain the Improvements in good operating order and condition and shall promptly make, at its sole expense, from time to time, all repairs, renewals, replacements, additions and improvements in connection therewith which are needful or desirable to such end.

Not For Legal Use

Section 1.13. The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises or any part thereof, shall notify the Mortgagee of the pendency of such proceedings. The Mortgagee may participate in any such proceedings and the Mortgagor from time to time shall deliver to the Mortgagee all instruments requested by it to permit such participation. In the event of such condemnation proceedings, the award or compensation payable to the Mortgagor is hereby assigned to and shall be paid to the Mortgagee. The Mortgagee shall be under no obligation to question the amount of any such award or compensation and may accept the same in the amount in which the same shall be paid. In any such condemnation proceedings, the Mortgagee may be represented by counsel selected by the Mortgagee, at the sole cost and expense of Mortgagor. The proceeds of any award or compensation so received shall, at the option of the Mortgagee, either be applied toward the payment of the Indebtedness notwithstanding the fact that the Indebtedness may not then be due and payable, or to the restoration of the Improvements in the same manner set for the use of insurance proceeds set forth in 1.09(h) above. In the event that any portion of the condemnation awards or compensation shall be used to reduce the Indebtedness, same shall be applied by the Mortgagee in any manner it shall designate including, but not limited to, the application of such award or compensation of the then unpaid installments of the principal balance due under the Note in the inverse order of their maturity such that the regular payments under the Note shall not be reduced or altered in any manner. The Mortgagor, upon request by the Mortgagee, shall make, execute and deliver to the Mortgagee any and all instruments requested for the purpose of confirming the assignment of the aforesaid awards and compensation to the Mortgagee free and clear of any liens, charges or encumbrances of any kind or nature whatsoever. The Mortgagee shall not be limited to the interest paid on the proceeds of any award or compensation, but shall be entitled to the payment by the Mortgagor of interest at the applicable rate provided for in the Note.

Section 1.14. (a) The Mortgagor shall not enter into any lease of all or any portion of the Premises and/or the Improvements, unless such lease is subordinate to the lien of this Mortgage or any other lien or encumbrance of the Mortgagee.

(b) The Mortgagor shall at all times promptly and faithfully perform, or cause to be performed promptly, all of the covenants, conditions and agreements contained in all leases of the Premises, or any part thereof, now or hereafter existing, on the part of the lessor thereunder to be kept and performed and shall at all times do all things necessary to compel performance by the lessees under each lease of all obligations, covenants and agreements by such lessee to be performed thereunder. If any of such leases provide for the giving by the lessee of certificates with respect to the status of such leases, the Mortgagor shall exercise its right to request such certificates within five (5) days of any demand therefor by the Mortgagee.

Section 1.15. Each lease covering the Premises, or any part thereof, shall by its terms be subject and subordinate to the lien of this Mortgage.

Section 1.16. Mortgagor shall not grant any licenses covering the Premises or a portion thereof, unless such lease is subordinate to the lien of this Mortgage or any other lien or encumbrance of the Mortgagee.

Not For Legal Use

Section 1.17. In the event any payment provided for herein or in the Note (whether principal, interest or otherwise) shall become overdue for a period in excess of ten (10) days, a late payment premium of ten (10) cents for each dollar so overdue shall become immediately due to the Mortgagee for the purpose of defraying the expenses incident to handling such delinquent payment, and such premium shall be deemed to be part of the Indebtedness and therefore secured by the lien of this Mortgage. Late payment premiums shall be payable together with the payment of such overdue payment.

Not For Legal Use

Section 1.18. (a) The Mortgagor shall, in compliance with Section 13 of the Lien Law, receive the advances secured by this Mortgage and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of improvement and shall apply the same first to the payment of the cost of improvement before using any part of the total of the same for any other purpose.

Not For Legal Use

(b) The Mortgagor agrees that it shall indemnify and hold the Mortgagee harmless from and against any loss or liability, cost or expense, including, without limitation, any judgments, reasonable attorneys' fees, costs of appeal bonds and printing costs arising out of or relating to any proceeding instituted by any claimant alleging priority over the lien of this Mortgage, and/or by any claimant alleging a violation by the Mortgagor or the Mortgagee of any section of any applicable law.

Not For Legal Use

Section 1.19. The Mortgagor shall (i) execute and deliver to the appropriate governmental authority any affidavit, instrument, document and/or filing required pursuant to any applicable statute, ordinance, rule and/or regulation, and (ii) deliver to the Mortgagee, within thirty (30) days after request by Mortgagee, all information Mortgagee deems appropriate in order to comply with the provision of any applicable law.

Section 1.20. The Mortgagor expressly covenants and agrees to pay in full the costs and expenses of the Mortgagee (including, without limitation, the reasonable fees and expenses of Mortgagee's counsel), promptly upon receipt of a statement therefor, which are incurred prior to and after the date hereof and which costs and expenses arise in connection with any matter incidental to the preparation, negotiation, execution, delivery, filing and recording, amendment or modification, and enforcement of the Note, the Building Loan Agreement and/or this Mortgage including, without limitation, the costs and expenses of every kind incurred by Mortgagee (including, without limitation, the reasonable fees and expenses of Mortgagee's counsel) in connection with the commencement of any action to foreclose this Mortgage or to collect the Indebtedness, all which costs and expenses shall, to the extent permitted by law, be a lien on the Mortgaged Property prior to any interest in, or claim upon, the Mortgaged Property arising subsequent to the date hereof. "Costs and expenses" as used in the preceding sentence shall include, without limitation (and in addition to those costs and expenses specified above), the reasonable attorneys' fees and expenses incurred by Mortgagee in retaining counsel for advice, suit, appeal or any insolvency or other proceedings under the Federal Bankruptcy Code or otherwise.

Not For Legal Use

Section 1.21. Mortgagor shall not make any material alterations to the Premises (other than alterations contemplated pursuant to the terms of the Building Loan Agreement) without the prior written consent of Mortgagee which consent shall be granted or withheld in Mortgagee's sole discretion.

Not For Legal Use

Section 1.22. The Mortgagor hereby assigns to the Mortgagee the leases, rents, issues and profits of the Premises, if any, and the Mortgagor grants to the Mortgagee the right to enter upon and to take possession of the Premises for the purpose of collecting such rents, issues and profits and to let the Premises or any part thereof, and to apply the rents, issues and profits, after payment of all necessary charges and expenses, on account of the Indebtedness. This assignment and grant shall continue in effect until the Note shall have been paid in full. The Mortgagee hereby grants to Mortgagor a license for the purpose of collecting said rents, issues and profits, and the Mortgagor shall be entitled to collect and receive said rents, issues and profits; provided, however, upon the occurrence of an Event of Default under this Mortgage, such license shall automatically terminate upon the Mortgagee's written notice to any tenant of the Premises, or any part thereof, to pay rent directly to the Mortgagee.

Not For Legal Use

Not For Legal Use

ARTICLE II
EVENTS OF DEFAULT AND REMEDIES

Section 2.01. If one or more of the following Events of Default shall happen, that is to say:

Not For Legal Use

(a) if (i) default shall be made in the payment of the principal and interest due under the Note at maturity, whether by acceleration or otherwise, (ii) default shall be made in the payment of any principal or interest due under the Note, when and as the same shall become due and payable (including the failure to pay the Principal Sum (as defined in the Note) on the Maturity Date), or (iii) default shall be made in the payment of any other fee or amount due under the Note or under this Mortgage; or

(b) if default shall be made in the due observance or performance of any covenant or agreement on the part of the Mortgagor in this Mortgage contained (other than those covered in clause (a) above) and such default shall have continued for a period of ten (10) days after written notice thereof shall have been given to the Mortgagor by the Mortgagee; or

(c) if by the order of a court of competent jurisdiction, a trustee, receiver or liquidator of the Mortgaged Property, or any part thereof, or of the Mortgagor shall be appointed and such order shall not be discharged or dismissed within sixty (60) days after such appointment; or

(d) if the Mortgagor or any Guarantor shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Mortgagor or of any substantial part of its property,

Not For Legal Use

or if the Mortgagor shall make any general assignment for the benefit of creditors, or if the Mortgagor shall fail generally to pay its debts as such debts become due, or if the Mortgagor shall take any action in furtherance of any of the foregoing; or

Not For Legal Use

(e) if any of the creditors of the Mortgagor or Guarantor shall commence against the Mortgagor an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect and if such case shall not be discharged or dismissed within ninety (90) days after the date on which such case was commenced; or

(f) if final judgment for the payment of money in excess of $25,000.00 shall be rendered against the Mortgagor and the Mortgagor shall not discharge the same or cause it to be discharged or paid within thirty (30) days from the entry thereof, or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered, and secure a stay of execution pending such appeal within the aforementioned thirty (30) day period; or

Not For Legal Use

(g) if any of the events enumerated in clauses (c) through (f) of this Section 2.01 shall happen with regard to any Guarantor or any of their respective properties; or

Not For Legal Use

(h) if any Guarantor defaults under or attempts to withdraw, revoke, cancel, or disclaim liability under any guaranty executed in favor of the Mortgagee (except the death of any Guarantor), including without limitation the Guaranty; or

Not For Legal Use

(i) if the Mortgagor sells, transfers, assigns, leases, conveys, mortgages or encumbers the Mortgaged Property or any part thereof or any interest therein or in Mortgagee without the prior written consent of the Mortgagee which may be granted or withheld in Mortgagee's sole discretion; or

(j) if a default occurs under any mortgage (which mortgage would only be permitted with the prior written consent of the Mortgagee), or any documents executed by Mortgagor in connection with such Mortgage, or any part thereof, that is prior or subordinate to the lien of this Mortgage or the mortgagee under any prior or subordinate mortgage commences a foreclosure action in connection with said mortgage; or

(k) if any interest in the Mortgagor shall be sold, assigned, transferred, conveyed, mortgaged, pledged, hypothecated or alienated without the prior written consent of the Mortgagee which consent may be granted or withheld in Mortgagee's sole discretion, except due to transfer to an immediate family member for estate planning purposes; or

(l) if it shall be illegal for the Mortgagor to pay any tax referred to in Section 1.08 hereof or if the payment of such tax by the Mortgagor would result in the violation of the usury laws of the state in which the Premises are located; or

(m) if an "Event of Default" shall have occurred and be continuing under the Building Loan Agreement; or

Not For Legal Use

(n) if the Mortgagor or any Guarantor defaults under any agreement with the Mortgagee and such default continues beyond the expiration of any applicable notice, grace and/or cure period; or

Not For Legal Use

(o) if the Mortgagor ceases to be a single purpose entity engaged solely in the business of operating the Premises; or

(p) if any certificate, written statement, representation, warranty or financial statement furnished to the Mortgagee by or on behalf of the Mortgagor, or any Guarantor (including, without limitation, representations and warranties contained herein), shall prove to have been false in any material respect at the time as of which the facts therein set forth were certified or to have omitted any substantial contingent or unliquidated liability or claim against the Mortgagor or any Guarantor or if on the date of the execution of this Mortgage there shall have been any material adverse change in any of the facts disclosed by any such statement or certificate, which change shall not have been disclosed in writing by the Mortgagor or any Guarantor to the Mortgagee at or prior to the time of such execution; or

Not For Legal Use

Not For Legal Use

(q) Any "Event of Default" occurs under the Modified Secured Promissory Note dated the date hereof from Mortgagor to Mortgagee in the amount of FOUR MILLION THREE HUNDRED THIRTY THREE THOUSAND THREE HUNDRED FIFTY AND 00/100 DOLLARS ($4,333,350.00), or under the Modified Mortgage, Assignment of Leases and Rents and Security Agreement dated the date hereof given by Mortgagor for the benefit of Mortgagee encumbering the Mortgaged Property.

Not For Legal Use

(r) the death of any Guarantor or a material adverse financial change of any Guarantor.

then and in each and every such case:

I. During the continuance of any such Event of Default (other than an Event of Default under Sections 2.01(c), (d) and (e) hereof), the Mortgagee, by written notice given to the Mortgagor, may declare the entire principal of the Note then outstanding (if not then due and payable), and all accrued and unpaid interest thereon, together with all other Indebtedness, to be due and payable immediately, and upon any such declaration the principal of the Note, said accrued and unpaid interest thereon, and all other indebtedness shall become and be immediately due and payable, anything in the Note, the Building Loan Agreement or in this Mortgage to the contrary notwithstanding. The entire principal of the Note then outstanding (if not then due and payable), and all accrued and unpaid interest thereon, together with all other Indebtedness, shall automatically be due and payable immediately, without demand or notice of any kind, during the continuance of an Event of Default under Sections 2.01(c), (d) and (e) hereof.

II. During the continuance of any such Event of Default, the Mortgagee personally, or by its agents or attorneys, may enter into and upon all or any part of the Mortgaged Property, and each and every part thereof, whereof it shall become possessed as aforesaid, and may exclude the Mortgagor, its agents and servants wholly therefrom; having and holding the same, may use, operate, manage and control the Mortgaged Property and conduct the business

Not For Legal Use

thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; upon every such entry, the Mortgagee, at the expense of the Mortgaged Property, from time to time, may maintain and restore the Mortgaged Property, may complete the construction of any of the Improvements and in the course of such completion may make such changes in the contemplated Improvements as it may deem desirable and may insure the same; likewise, from time to time, at the expense of the Mortgaged Property, the Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as it may deem advisable; in every such case the Mortgagee shall have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of the Mortgagor with respect thereto either in the name of the Mortgagor or otherwise as it shall deem best; the Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Mortgaged Property and every part thereof, all of which shall for all purposes constitute property of the Mortgagee; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Mortgaged Property, or any part thereof, as well as reasonable compensation for the services of the Mortgagee and for all of the Mortgagee's attorneys, agents, clerks, and other employees, the Mortgagee shall apply the moneys arising as aforesaid to the payment of the Indebtedness in the manner and in the amounts as the Mortgagee shall elect in its sole discretion.

(l) During the continuance of any such Event of Default, the Mortgagee, with or without entry, personally or by its agents or attorneys, may:

(1) sell the Mortgaged Property, or any part thereof, to the extent permitted and pursuant to the procedures provided by applicable law, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales as a single entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; or

(2) institute a proceeding or proceedings, judicial or nonjudicial, by advertisement or otherwise, for the complete foreclosure of this Mortgage in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner; notwithstanding the foregoing, upon default of the Mortgage or the Note, or other obligation secured thereby, Mortgagee shall have the right to sell the Premises by power of sale pursuant to Article 14 of the New York Real Property Actions and Proceedings Law; or

(3) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note, the Building Loan Agreement, or in this Mortgage, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Mortgagee shall elect.

Not For Legal Use

Section 2.02. (a) The Mortgagee may adjourn from time to time any sale to be made pursuant to or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable law, the Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

Not For Legal Use

(b) Upon the completion of any sale or sales made pursuant to or by virtue of this Mortgage, the Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the purchaser or purchasers a good and sufficient instrument or instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold and shall execute and deliver to the appropriate governmental authority any affidavit, instrument, document and/or filing required pursuant to any applicable statute, ordinance, rule and/or regulation. The Mortgagor hereby irrevocably appointed the true and lawful attorney of the Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold, and for that purpose the Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, including, without limitation, any required affidavit, instrument, document and/or filing and may substitute one or more persons with like power. The Mortgagor hereby ratifies and confirms all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Mortgagor, if so requested by the Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Mortgagee, for that purpose. Any such sale or sales whether made under or by virtue of this Article II, under the power of sale herein granted, or under or by virtue of judicial proceedings of sale herein granted or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under the Mortgagor.

Not For Legal Use

Not For Legal Use

(c) In the event of any sale or sales whether made under or by virtue of this Article II, under the power of sale herein granted, or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the entire principal of, and interest on, the Note, if not previously due and payable, and all other sums required to be paid by the Mortgagor pursuant to this Mortgage, immediately thereupon, shall, anything in the Note or in this Mortgage to the contrary notwithstanding, become due and payable.

(d) The purchase money proceeds or avails of any sale made under or by virtue of this Article II, together with any other sums which then may be held by the Mortgagee under this Mortgage, whether under the provisions of this Article II or otherwise, shall be applied as follows:

First: To the payment of the costs and expenses of such sale, including, but not limited to, the reasonable compensation to the Mortgagee, its agents and attorneys, and any sums that may be due under and/or pursuant to any

Not For Legal Use

statute, rule, regulation and/or law that imposes any tax, charge, fee and/or levy in connection with and/or arising from the exercise of any right and/or remedy under this Mortgage or the recording or filing of any deed, instrument of transfer or other such document in connection with any such sale and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by the Mortgagee under this Mortgage, together with interest at the Involuntary Rate, on all advances made by the Mortgagee pursuant to this Mortgage.

Not For Legal Use

Second: To the payment of the whole amount then due, owing or unpaid under the Note for principal and interest, in such order as the Mortgagee shall determine in its sole and absolute discretion with interest on the unpaid principal at the Involuntary Rate from and after the due date (whether by acceleration or otherwise).

Not For Legal Use

Third: To the payment of the surplus, if any, to whomsoever may lawfully be entitled to receive the same.

Not For Legal Use

(e) Upon any sale made under or by virtue of this Article II, whether made under the power of sale herein granted or under by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Indebtedness of the Mortgagor secured by this Mortgage the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage.

Section 2.03. (a) If all of the principal shall be due and payable under the Note, whether by acceleration or otherwise, the Mortgagor shall pay to the Mortgagee (i) interest at the Involuntary Rate on the then unpaid principal of the Note, and on the sums required to be paid by the Mortgagor pursuant to any provision of this Mortgage from the due date thereof until the payment in full of the Indebtedness, and (ii) such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to the Mortgagee, its agents, and attorneys and any expenses incurred by the Mortgagee pursuant to the exercise of any of the Mortgage rights hereunder.

(b) In the event of a sale of the Mortgaged Property, or any part thereof, and of the application of the proceeds of sale, as in this Mortgage provided, to the payment of the debt hereby secured, the Mortgagee shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid upon the Note, and to enforce payment of all other charges, payments, costs and amounts due under this Mortgage, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest at the Involuntary Rate. In case of the commencement of any case against the Mortgagor under any applicable bankruptcy,

Not For Legal Use

insolvency, or other similar law now or hereafter in effect or any proceedings for its reorganization or involving the liquidation of its assets, then the Mortgagee shall be entitled to prove the whole amount of principal and interest due upon the Note to the full amount thereof, and all other payments, charges, costs and amounts due under this Mortgage, without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Property; provided, however, that in no case shall the Mortgagee receive a greater amount than such principal and interest and such other payments, charges, costs and amounts from the aggregate amount of the proceeds of the sale of the Mortgaged Property and the distribution from the estate of the Mortgagor.

(c) No recovery of any judgment by the Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of the Mortgagor shall affect in any manner or to any extent, the lien of this Mortgage upon the Mortgaged Property, or any part thereof, or of any liens, rights, powers or remedies of the Mortgagee hereunder, but such liens, rights, powers and remedies of the Mortgagee shall continue unimpaired as before.

(d) Any moneys collected by the Mortgagee under this Section 2.03 shall be applied by the Mortgagee in accordance with the provisions of subsection (d) of Section 2.02.

Section 2.04. That the holder of this Mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver. Any such receiver shall have the right to immediate possession of the Mortgaged Property from and after his or her appointment, it being the intention of the parties hereto that this Mortgage permit such receiver to have every right and power with respect to the Mortgaged Property that is permitted by applicable law. It is expressly agreed that any such receiver shall be permitted do any further acts as the Mortgagee may determine to be necessary to complete the development and construction of any Improvements at the Premises pursuant to the Building Loan Agreement. All such costs and expenses of such receiver that are advanced by the Mortgagee pursuant to the Building Loan Agreement to develop and construct the Improvements as aforesaid shall, to the extent permitted by the Building Loan Agreement and applicable law and subject to the terms of Section 3.16 hereof, be added to the Indebtedness, and secured by this Mortgage.

Section 2.05. Notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, or of any of its property, or of the Mortgaged Property or any part thereof, the Mortgagee shall be entitled to retain possession and control of all property now or hereafter held by the Mortgagee under this Mortgage.

Section 2.06. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or any acquiescence therein; and every power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time as often as may be deemed expedient by the Mortgagee. Nothing in this

Not For Legal Use

Mortgage or in the Note shall affect the obligation of the Mortgagor to pay the principal of, and interest on, the Note in the manner and at the time and place therein respectively expressed.

Not For Legal Use

Section 2.07. The Mortgagor shall not insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, that may affect the covenants and terms of performance of this Mortgage, nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof that may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof, and the Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property marshalled upon any foreclosure hereof.

Not For Legal Use

Not For Legal Use

Section 2.08. During the continuance of any Event of Default, and pending the exercise by the Mortgagee of its right to exclude the Mortgagor from all or any part of the Mortgaged Property, the Mortgagor agrees to pay the fair and reasonable rental value for the use and occupancy of the Mortgaged Property or any part thereof that is in its possession for such period, and upon default of any such payment, shall vacate and surrender possession of the Mortgaged Property, or any part thereof, to the Mortgagee or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery of possession of the Mortgaged Property for non-payment of rent, however designated.

ARTICLE III

MISCELLANEOUS

Section 3.01. In the event any one or more of the provisions contained in this Mortgage, in the Building Loan Agreement or in the Note shall for any reason be held to be invalid, illegal or unenforceable in any respect. such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such provision had never been contained herein or therein.

Section 3.02. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when delivered in person or sent by registered or certified mail. return receipt requested. to any party hereto at its address above stated.

Section 3.03. Whenever notice is required herein, the giving of such notice may be waived in writing by the person or persons entitled to receive such notice.

Not For Legal Use

Section 3.04. All of the grants, terms, conditions, provisions and covenants of this Mortgage shall run with the land, shall be binding upon the Mortgagor and shall inure to the benefit of the Mortgagee, subsequent holders of this Mortgage and their respective successors and assigns. For the purpose of this Mortgage, the term "Mortgagor" shall include and refer to each of the mortgagors named herein, any subsequent owner of the Mortgaged Property, or any part thereof, and their respective heirs, executors, legal representatives, successors and assigns. If there is more than one Mortgagor, all their undertakings hereunder shall be joint and several, and each representation, warranty, covenant and agreement in this Mortgage shall apply to each and all of such Mortgagors named herein.

Not For Legal Use

Section 3.05. The enforcement of this Mortgage shall be governed, construed and interpreted by the laws of the State of New York, without regard to the principle of conflicts of laws. Nothing in this Mortgage, the Note or in any other agreement between the Mortgagor and the Mortgagee shall require the Mortgagor to pay, or the Mortgagee to accept, interest in an amount that would subject the Mortgagee to any penalty or forfeiture under applicable law. If the payment of any charges, fees or other sums due hereunder or under the Note or any such other agreement that are or could be held to be in the nature of interest and that would subject the Mortgagee to any penalty or forfeiture under applicable law, then, ipso facto, the obligations of the Mortgagor to make such payment shall be reduced so that interest under the Note shall be the highest rate authorized under applicable law. Should the Mortgagee receive any payment that is or would be in excess of the highest rate authorized under applicable law, such payment shall be deemed to have been made in error, and shall automatically be applied to reduce the outstanding principal balance of the Indebtedness without any penalty.

Not For Legal Use

Not For Legal Use

Section 3.06. That this Mortgage is made pursuant to the Building Loan Agreement intended to be filed in the Office of the Clerk of the County in which the Premises are located on or before the date of recording of this Mortgage, and this Mortgage is subject to all of the provisions of such Building Loan Agreement.

Section 3.07. Except as expressly set forth herein to the contrary, whenever the consent or approval of the Mortgagee is required, the decision whether to consent or approve shall be in the sole and absolute discretion of the Mortgagee.

Section 3.08. This Mortgage, the Note, the Building Loan Agreement, and all other documents executed and delivered in connection herewith shall be given a fair and reasonable construction in accordance with the intention of the parties as expressed herein and therein and without regard for any rule of law requiring construction against the party that prepared such instruments.

Section 3.09. This Mortgage shall constitute a "security agreement," as such term is defined in the Code. By executing and delivering this Mortgage, the Mortgagor has granted, in the same manner and with the same effect described in the Granting Clause hereof, to the Mortgagee, a security interest in the Chattels, the Intangibles, and those items listed as (f) - (j) in the Granting Clause of this Mortgage (collectively, "Documents"). If any Event of Default shall occur, the Mortgagee shall have, in addition to any and all other rights and remedies set forth in this Mortgage, and may exercise without demand, any and all rights and remedies

Not For Legal Use

granted to a secured party under the Code, including, but not limited to, the right to take possession of the Chattels, the Documents, and the Intangibles, or any part thereof, and the right to advertise and sell the Chattels, the Documents, and the Intangibles, or any part thereof, pursuant to and in accordance with the power of sale provided for in this Mortgage. The Mortgagor agrees that any notice of public or private sale with respect to the Chattels, the Documents, and the Intangibles, or any part thereof, shall constitute reasonable notice if it is sent to the Mortgagor not less than ten (10) days prior to the date of any such sale. The proceeds of any such sale of the Chattels, the Documents, and the Intangibles, or any part thereof, shall be applied in the manner set forth in Section 2.02(d) of this Mortgage.

Not For Legal Use

Section 3.10. All covenants hereof shall be construed as affording to the Mortgagee rights additional to and not exclusive of the rights conferred under the provisions of any applicable law.

Not For Legal Use

Section 3.11. This Mortgage cannot be altered, amended, waived, modified or discharged orally, and no executory agreement shall be effective to modify, waive or discharge, in whole or in part, anything contained in this Mortgage unless it is in writing and signed by the party against whom enforcement of the modification, alteration, amendment, waiver or discharge is sought.

Not For Legal Use

Section 3.12. The Mortgagor acknowledges that it has received a true copy of this Mortgage.

Not For Legal Use

Section 3.13. This Mortgage may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same Mortgage.

Section 3.14. The information set forth on the cover hereof is hereby incorporated herein.

Section 3.15. (a) As used in this Section 3.15, the following capitalized terms shall have the meanings set forth below:

"Disposal" means the intentional or unintentional abandonment, discharge, deposit, injection, dumping, spilling, leaking, storage, burning, thermal destruction or placing of any substance so that it or any of its constituents may enter the Environment.

"Environment" means any water including but not limited to surface water and ground water or water vapor, any land including land surface or subsurface, stream sediments, air, fish, wildlife, plants, and all other natural resources or environmental media.

"Environmental Laws" means all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances, regulations, codes and rules relating to the protection of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous

Not For Legal Use

Substances and the policies, guidelines, procedures, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

Not For Legal Use

"Environmental Permits" means all licenses, permits, approvals, authorizations, consents or registrations required by any applicable Environmental Laws and all applicable judicial and administrative orders in connection with ownership, lease, purchase, transfer, closure, use and/or operation of the Premises and/or as may be required for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances.

Not For Legal Use

"Environmental Questionnaire" means a questionnaire and all attachments thereto concerning: 1) activities and conditions affecting the Environment at the Premises, or 2) the enforcement or possible enforcement of any Environmental Law against the Mortgagor.

"Environmental Report" means a written report prepared for the Mortgagee by an environmental consulting or environmental engineering firm.

Not For Legal Use

"Hazardous Substances" means, without limitation, any explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances and any other material defined as a hazardous substance in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601(14).

Not For Legal Use

"Release" has the same meaning as given to that term in Section 101(22) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601(22), and the regulations promulgated thereunder.

(b) The Mortgagor represents and warrants to the Mortgagee that:

(i) the Environmental Questionnaire previously provided to the Mortgagee was and is accurate and complete and does not omit any material fact the omission of which would make the information contained therein materially misleading.

(ii) no asbestos or urea formaldehyde foam insulation is located in any of the buildings or structures improving the Premises.

(iii) no above-ground or underground storage tanks containing Hazardous Substances are or have been located at the Premises.

(iv) radon gas is not present in buildings on any of the Premises in concentrations exceeding 4 pCi/l.

(v) no electrical transformers, capacitors, lighting ballasts or other electric equipment on any of the Premises contain polychlorinated biphenyls (PCBs) in concentrations exceeding amounts allowed by any Environmental Law.

Not For Legal Use

(vi) the Premises are not being used and have not been used for the Disposal of any Hazardous Substance or for the treatment, storage or Disposal of Hazardous Substances,

Not For Legal Use

(vii) no Release of a Hazardous Substance has occurred or is threatened on, at, or from the Premises,

(viii) neither the Mortgagor nor the Premises is subject to any existing, pending or threatened suit, claim, notice of violation or request for information under any Environmental Law, and

Not For Legal Use

(ix) the Mortgagor is in compliance with all Environmental Laws applicable to its operations at the Premises.

(c) The Mortgagor covenants and agrees with the Mortgagee that so long as this Mortgage remains a lien on the Premises that:

Not For Legal Use

(i) the Mortgagor shall comply with all Environmental Laws in connection with its ownership or use of the Premises or any related property,

(ii) Mortgagor shall not suffer, cause or permit the Disposal of Hazardous Substances at the Premises,

Not For Legal Use

(iii) the Mortgagor shall not suffer, cause or permit the generation, handling, processing, use, or storage of Hazardous Substances on the Premises except in compliance with all Environmental Laws,

(iv) the Mortgagor shall promptly notify the Mortgagee in the event of the Disposal of any Hazardous Substance at the Premises, or any Release, or threatened Release, of a Hazardous Substance, from the Premises,

(v) the Mortgagor shall allow the Mortgagee and its agents access to the Premises at all reasonable times upon reasonable notice and permit such inspections, tests, drilling of monitoring wells, soil borings or other analysis of the Premises as the Mortgagee may reasonably require,

(vi) the Mortgagor shall, at the Mortgagee's request, provide to the Mortgagee, at the Mortgagor's expense, updated answers to Environmental Questionnaires and/or Environmental Reports concerning the Premises. and

(vii) the Mortgagor shall deliver promptly to the Mortgagee (A) copies of any documents received from the United States Environmental Protection Agency or any state, county or municipal environmental or health agency concerning the Mortgagor's operations at the Premises, and (B) copies of any documents submitted by the Mortgagor to the United

Not For Legal Use

States Environmental Protection Agency or any state, county or municipal environmental or health agency concerning its operations at the Premises.

Not For Legal Use

(d) The Mortgagor agrees to indemnify, defend, and hold harmless the Mortgagee from and against any and all liabilities, claims, damages, penalties, expenditures, losses or charges including, but not limited to, all costs of investigation, monitoring, legal representation, remedial response, removal, restoration or permit acquisition, which may now or in the future be undertaken, suffered, paid, awarded, assessed or otherwise incurred by the Mortgagee or any other person or entity as a result of the presence of, Release of, or threatened Release of, Hazardous Substance on, in, under or near the Premises. The liability of the Mortgagor to the Mortgagee under the covenants of this Section 3.15 is not limited by any exculpatory provisions in the Note or in any of the other documents securing the loan and shall survive any foreclosure of this Mortgage, transfer of the Premises by deed in lieu of foreclosure or any other transfer or termination of this Mortgage regardless of the means of such transfer or termination; but the indemnity hereunder shall not apply to acts committed by the Mortgagee, or its designee, nominee or any purchaser at a foreclosure sale that are committed after any of such parties shall have taken title to the Premises.

Not For Legal Use

(e) If the Mortgagor defaults on any of its obligations pursuant to this Mortgage, the Building Loan Agreement, the Note or any other loan document, the Mortgagee or its designee shall have the right, upon reasonable notice to the Mortgagor, to enter upon the Premises and conduct such tests, investigations and samplings, including but not limited to, installation of monitoring wells, as shall be reasonably necessary for the Mortgagee to determine whether any Disposal of Hazardous Substances has occurred on, at or near the Premises. The costs of all such tests, investigations and samplings shall be added to the balance of the Indebtedness.

Not For Legal Use

(f) The Mortgagor agrees that the Mortgagee shall not be liable in any way for the completeness or accuracy of any Environmental Report or the information contained therein. The Mortgagor further agrees that the Mortgagee has no duty to warn the Mortgagor or any other person or entity about any actual or potential environmental contamination or other problem that may have become apparent or will become apparent to the Mortgagee.

Section 3.16. If and to the extent the Premises are located in the State of New York, then notwithstanding anything contained herein to the contrary, the maximum amount of indebtedness secured by this Mortgage at execution or which under any contingency may become secured hereby at any time hereafter is $4,333,500.00, plus interest thereon, plus all amounts expended by the Mortgagee after default by the Mortgagor that constitute payment of (i) taxes, charges or assessments that may be imposed by law upon the Premises; (ii) premiums on insurance policies covering the Premises; (iii) expenses incurred in protecting or upholding the lien of this Mortgage, including, but not limited to the expenses of any litigation to prosecute or defend the rights and lien created by this Mortgage; (iv) expenses incurred in protecting the collateral encumbered by this Mortgage; or (v) any amount, cost or charge to which the Mortgagee becomes subrogated upon payment, whether under recognized principles of law or equity, or under express statutory authority.

Not For Legal Use

Section 3.17. No course of dealing between Mortgagor and Mortgagee and no act, delay or omission by Mortgagee in exercising any right or remedy hereunder, including, without limitation, acceptance of any partial payment on the Indebtedness, shall operate as a waiver of any right, remedy or default hereunder, or of any other right or remedy, and no single or partial exercise of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. All rights and remedies of Mortgagee hereunder are cumulative.

Not For Legal Use

Section 3.18. The Mortgagee may release any portion or portions of or interest or interests in the Mortgaged Property from the lien of this Mortgage, either with or without consideration, and may release or discharge in whole or in part any other property which it may at any time hold as security for payment of the Indebtedness or any part thereof and may take any other bond, note or obligation as evidence of the Indebtedness, payable at such time and on such terms as the Mortgagee may approve, and may change the rate of interest in accordance with the provisions of the Note, and until the Indebtedness shall have been paid in full, every person who shall be or become personally liable for the Indebtedness shall be bound and continue to be liable for the Indebtedness as fully and effectively as if his consent had been previously obtained.

Not For Legal Use

Section 3.19. If the Mortgagee shall receive from or on behalf of the Mortgagor any sum less than the full amount then due and payable, the Mortgagee may, but shall not be obligated to, accept the same and if the Mortgagee elects to accept any such payment, it may hold the same or any part thereof without liability for interest, in a special account and may from time to time apply the same or any part thereof to the Indebtedness or to the payment of any taxes, assessments, sewer or water charges or insurance premiums desirable to maintain the lien of this Mortgage or to any expenses, including costs and attorneys' fees and disbursements, incurred by the Mortgagee in attempting to collect any amount owing on the Indebtedness and in bringing any foreclosure proceedings with respect to this Mortgage.

Not For Legal Use

Section 3.20. Without limiting any other right of Mortgagee, whenever Mortgagee has the right to declare any Indebtedness to be immediately due and payable (whether or not it has so declared), Mortgagee at its sole election may set off against the Indebtedness any and all moneys then owed to Mortgagor by Mortgagee in any capacity, whether or not the Indebtedness or the obligation to pay such moneys owed by Mortgagee is then due, and Mortgagee shall be deemed to have exercised such right of setoff immediately at the time of such election even though any charge therefor is made or entered on Mortgagee's records subsequent thereto.

Section 3.21. The Mortgagor recognizes that, in general, borrowers who experience difficulties in honoring their loan obligations, in an effort to inhibit or impede lenders from exercising the rights and remedies available to lenders pursuant to mortgages, notes, loan agreements or other instruments evidencing or affecting loan transactions, frequently present in court the argument, without merit, that some loan officer or administrator of the lender made an oral modification or made some statement that could be interpreted as an extension or modification or amendment of one or more debt instruments and that the borrower relied to its detriment upon such "oral modification of the loan document". For that reason, and in order to

Not For Legal Use

protect the Mortgagee from such allegations in connection with the transactions contemplated by this Mortgage and the Building Loan Agreement, the Mortgagor acknowledges that this Mortgage, the Note, the Building Loan Agreement, and all instruments referred to in any of them can be extended, modified or amended only in writing executed by the Mortgagee and that none of the rights or benefits of the Mortgagee can be waived permanently except in a written document executed by the Mortgagee. The Mortgagor further acknowledges the Mortgagor's understanding that no officer or administrator of the Mortgagee has the power or the authority from the Mortgagee to make an oral extension or modification or amendment of any such instrument or agreement on behalf of the Mortgagee.

Section 3.22. Mortgagee shall not be deemed or construed to be a mortgagee in possession or be obligated to perform or discharge any obligation of the Mortgagor as a result of the collateral assignment hereby effected, and the Mortgagor hereby agrees to indemnify and hold the Mortgagee harmless from and against any and all liability, loss or damage which the Mortgagee may incur by reason of any act of the Mortgagee under this Mortgage, other than as a result of the Mortgagee's willful misconduct or gross negligence. Should the Mortgagee incur any such liability, loss or damage by reason of this Mortgage and which is covered by the foregoing indemnity, or in defense against any such claims or demands, or perform any acts or covenants on the part of Mortgagor to be performed under any lease, or pay for the account of the Mortgagor any and all sums, costs and expenses for the discharge of taxes, assessments, water rents or other liens against the Mortgaged Property or any part thereof, or on account of insurance premiums or repairs, and also any amounts and expenses necessary to perform any covenants and conditions to be performed on the part of the Mortgagor under any lease, the amount thereof, including costs, expenses and attorneys' fees, together with interest thereon at the Involuntary Rate from the date such expenses were paid by the Mortgagee to the date of payment to the Mortgagee by the Mortgagor, shall be included in the obligations secured by this Mortgage, and the Mortgagor shall reimburse the Mortgagee therefor upon demand.

Section 3.23 In addition to any other indemnifications provided herein or in the other Loan Documents (as defined in the Note), Mortgagor shall protect, defend, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees, whether in-house staff, retained firms, or otherwise, and disbursements), imposed upon or incurred by or asserted against Mortgagee by reason of (a) ownership of this Mortgage, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance or Asbestos on, from, or affecting the Mortgaged Property; (g) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance or

Not For Legal Use

Asbestos; (h) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance or Asbestos; (i) any violation of the Environmental Laws, which are based upon or in any way related to such Hazardous Substance or Asbestos including, without limitation, the costs and expenses of any Remedial Work, attorneys' and consultant fees and disbursements, investigation and laboratory fees, court costs, and litigation expenses; (j) any failure of the Mortgaged Property to comply with any Legal Requirements (as defined in the Building Loan Agreement); (k) any representation or warranty made in the Note, this Mortgage or any of the other Loan Documents being false or misleading in any material respect as of the date such representation or warranty was made; (l) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Mortgaged Property or any part thereof under any legal requirement or any liability asserted against Mortgagee with respect thereto, including mortgage brokerage fees; (m) any ongoing matters arising out of the transaction contemplated by this Mortgage, the Note and the Building Loan Agreement and the Indebtedness (including, but not limited to, all costs and any reappraisals of the Mortgaged Property or any other collateral for the Indebtedness), (n) the claims of any lessee of any or any portion of the Mortgaged Property or any person acting through or under any lessee or otherwise arising under or as a consequence of any lease, (o) any amounts payable to Mortgagee by reason of the application of this paragraph shall be secured by this Mortgage and shall become immediately due and payable and shall bear interest at the Involuntary Rate from the date the loss or damage is sustained by Mortgagee until paid and any amendment to, or restructuring of, the Indebtedness, (p) any and all lawful action that may be taken by Mortgagee in connection with the enforcement of the provisions of this Mortgage or the Note or the Building Loan Agreement, whether or not suit is filed in connection with the same, or in connection with the Mortgagor, any Guarantor and/or any partner, member, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding, and (q) the past, current and/or future sale or offering for sale of any interests in Mortgagor, including, without limitation, liabilities under any applicable securities or blue sky laws. All sums expended by Mortgagee shall be payable on demand and, until reimbursed by Mortgagor pursuant hereto, shall be deemed additional principal of the Indebtedness and shall bear interest at the Involuntary Rate. The obligations and liabilities of Mortgagor under this Section 3.23 shall survive the termination, satisfaction. or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including, but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

Section 3.24 MORTGAGOR, AND, BY ITS ACCEPTANCE OF THIS NOTE, MORTGAGEE, HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS MORTGAGE AND THE BUSINESS RELATIONSHIP THAT IS BEING ESTABLISHED. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY MORTGAGOR AND BY MORTGAGEE, AND MORTGAGOR ACKNOWLEDGES THAT NEITHER MORTGAGEE NOR ANY PERSON ACTING ON BEHALF OF MORTGAGEE HAS MADE ANY REPRESENTATIONS OF FACT TO INCLUDE THIS WAIVER OF TRIAL BY JURY OR HAS TAKEN ANY ACTIONS WHICH IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. MORTGAGOR AND MORTGAGEE ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER

Not For Legal Use

INTO A BUSINESS RELATIONSHIP, THAT MORTGAGOR AND MORTGAGEE HAVE ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS MORTGAGE AND THAT EACH OF THEM WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. MORTGAGOR AND MORTGAGEE FURTHER ACKNOWLEDGE THAT THEY HAVE BEEN REPRESENTED (OR HAVE HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS NOTE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL.

Not For Legal Use

Section 3.25 If Mortgagor constitutes more than one individual or entity, the representations, covenants, warranties and obligations of Mortgagor hereunder are joint and several with respect to each individual or entity.

Not For Legal Use

INTENTIONALLY LEFT BLANK
SIGNATURE PAGE TO FOLLOW

Not For Legal Use

Not For Legal Use

Not For Legal Use

IN WITNESS WHEREOF, Mortgagor has executed this instrument the day and year first above written.

Not For Legal Use

Rose Way LLC,
a New York limited liability company

By: Jonathan Bognacki, Manager

STATE OF NEW YORK)
Not For Legal Use
) ss:
COUNTY OF SUFFOLK)

On the 1st day of November in the year 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared, Jonathan Bognacki, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

Not For Legal Use

Notary Public

ADAM ABOEACHA
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01AB6093211
Qualified in Suffolk County
Commission Expires June 02, 2023.

Not For Legal Use

Schedule "A"
Legal Description

Not For Legal Use

Not For Legal Use

Not For Legal Use

Not For Legal Use

Not For Legal Use

First American Title Insurance Company

Title Number: **NLT-29613-S-19**

SCHEDULE A DESCRIPTION

ALL THAT certain plot, piece or parcel of land, situate, lying and being at Mecox, Town of Southampton, Suffolk County New York, more particularly described as Lot 10 on Subdivision Map of the Zebrowski Estate filed in the Suffolk County Clerk's Office on August 5, 1983, as Map No. 7213 being more particularly bounded and described as follows:

Not For Legal Use

BEGINNING at a point on the westerly side of Rose Way distant the following 9 courses and distances from the extreme easterly terminus of a curve which curve has a radius of 25 feet and a length of 35.80 feet and connects the southerly side of Rose Way with the easterly side of Jobs Lane (Downs Lane):

1) South 82 degrees 24' 58" East 247.43 feet;
2) South 62 degrees 25' 00" East 85.72 feet;
3) along the arc of a curve bearing in an Easterly direction having a radius of 430 feet a distance of 181.99 feet;

Not For Legal Use

4) South 86 degrees 39' 58" East 50 feet;
5) along the arc of a curve bearing in an Easterly direction having a radius of 263 feet a distance of 169.07 feet;
6) along the arc of a curve bearing in a southerly direction having a radius of 175 feet a distance of 222.97 feet;

Not For Legal Use

7) South 23 degrees 10 [illegible] West 50 [illegible] feet;
8) along the arc of a curve bearing in a Westerly direction having a radius of 40 feet a distance of 34.53 feet;
9) along the arc of a curve bearing in a Southerly direction having a radius of 60 feet a distance of 56.98 feet to the point of beginning;

Not For Legal Use

RUNNING THENCE from the point of beginning along the Westerly and Southerly sides of the Rose Way cul-de-sac along the arc of a curve having a radius of 60 feet a distance of 88.43 feet;

RUNNING THENCE South 30 degrees 55' 22" West 136.29 feet;

RUNNING THENCE South 52 degrees 41' 09" West 181.62 feet;

RUNNING THENCE North 67 degrees 04' 38" West 155 feet;

RUNNING THENCE North 29 degrees 52' 43" East 336.61 feet;

RUNNING THENCE South 71 degrees 47' 19" east 165 feet to the Westerly side of Rose Way the point or place of BEGINNING.

STATEMENT REGARDING THE PROPERTY [CHECK BOX AS APPLICABLE]

☒	This Security Instrument covers real property improved, or to be improved, by one or two family dwelling only.
☑	This Security Instrument covers real property principally improved, or to be improved, by one or more structures containing, in aggregate, not more than six residential dwelling units having its own separate cooking facilities.
☐	This Security Instrument does not cover real property improved as described above.

Not For Legal Use

Exhibit "B"
Permitted Exceptions

Not For Legal Use

Not For Legal Use

Not For Legal Use

Not For Legal Use